

AFFILIATED TEST BED
MEMORANDUM OF AGREEMENT
BETWEEN
THE RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION (RITA)
AND
[TBD ORGANIZATION]

TITLE: Memorandum of Agreement (MOA) to support the development and deployment of infrastructure components using 5.9 GHz Dedicated Short Range Communications (DSRC) and other Vehicle-to-Infrastructure (V2I) wireless communications in Research Test Beds.

PURPOSE: The purpose of this and similar memoranda is to create a non-binding, precompetitive affiliation of 5.9 GHz DSRC infrastructure device makers, operators of V2I installations, and developers of applications that use V2I communications. The goal of creating this affiliated structure is to harness the collective abilities of these members to transition V2I technology toward full deployment by allowing for the exchange of information and the sharing of deployment lessons learned; by developing a common technical platform; and by expanding test bed options for users.

The Research and Innovative Technology Administration (RITA) expects to enter into a number of these agreements with public, private, non-profit and academic organizations to create an affiliation of test beds. All agreements will give the named organization an equal ability to participate in the affiliation. The overall goal of the affiliation is to arrive at a consensus of the stakeholders in devices and installations that use V2I communication. That consensus will be embodied in various requirements documents and deployment guidelines. These agreements will be structured in a manner that facilitates the exchange of information that will result in a series of documents, as well as the sharing of tools and resources across all facilities to support and encourage a consistent, future deployment of 5.9GHz DSRC and other V2I wireless communications technology.

PARTIES: (a) **FEDERAL AGENCY:**
Research and Innovative Technology Administration
United States Department of Transportation.

(b) **COLLABORATOR:**
TBD Organization
Street Address
City, State, Country, Postal Code.

DURATION: Three (3) years.

INTRODUCTION

This MOA is entered into pursuant to the authority contained in 49 U.S.C. 112(e) between TBD Organization (the “Collaborator”), an XYZ entity [1)for-profit, 2)not-for-profit, 3)governmental, or 4)academic], and the Research and Innovative Technology Administration (“the Government” or “RITA”), of the United States Department of Transportation (US DOT) and located at 1200 New Jersey Avenue S.E., Washington, DC 20590.

AUTHORITY

This MOA allows affiliated parties to team together to share technical expertise and resources (including intellectual property) on mutually beneficial research and development in order to improve, promote, or further certain technological developments or to solve certain technological problems. Such teaming effort allows the parties to share the risks and benefits of collaborative research and development, to promote technology transfer, to exchange lessons learned, and to advance commercialization of certain technologies.

WHEREAS, TBD Organization is a [organization] with expertise in the design, production and support of innovative solutions in the development, installation, and operation of infrastructure equipment using 5.9GHz DSRC and other V-I communications;

WHEREAS, the Research and Innovative Technology Administration has a mission to facilitate the Department’s research and technology activities (49 CFR 1.46);

WHEREAS, the parties, Government and TBD Organization, seek to collaborate on advancing the requirement specifications and infrastructure devices using 5.9GHz DSRC deployment guidelines and other V2I communication system requirements;

NOW THEREFORE, pursuant to the *49 U.S.C. 112(e)*, the parties enter into this MOA and agree as follows:

ARTICLE I – DEFINITIONS

- 1.1 “Affiliation” means a group of organizations united in action or interest. For purposes of this MOA, “Affiliation” shall include all parties to this MOA and any Third-Party Collaborator(s).
- 1.2 “Agreement” means this Memorandum of Agreement.
- 1.3 “Collaborator” means any party to this Agreement, other than Government.
- 1.4 “5.9GHz DSRC Infrastructure Equipment” means any device intended to be operated primarily in a fixed location which contains 5.9GHz DSRC radio equipment as one of its means of communicating with other devices.

- 1.5 “Collaborator Equipment” means personal and real property, tools, apparatus, devices, and technology (including computer software), wherever located, that Collaborator provides for use in connection with the activities to be performed under this Agreement.
- 1.6 "Collaborator Proprietary Data" means data derived through use of any device marked proprietary or confidential by the Collaborator.
- 1.7 “Collaborator Personnel” means any employee, consultant, or other individual (including contract personnel of the Collaborator) acting under the direction or authority of the Collaborator and/or its contractor.
- 1.8 “Computer Software” or “Software” means any combination of associated computer instructions and computer data definitions, including computer programs and computer databases, required to enable computer hardware to perform computational or control functions.
- 1.9 “Confirmatory Nonexclusive License Agreement” means a separate, binding and mutually-negotiated license agreement to any Subject Inventions developed in the performance of this Agreement, and serving as confirmation of such license right of the parties and evidence of the terms of such mutually-negotiated agreement.
- 1.10 “Copyright” means the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of “Subject Data” (including Computer Software).
- 1.11 “Data” means recorded information, including technical information, schematics, computer software, and documentation, regardless of the form or media on which it may be recorded.
- 1.12 “Day” means, unless otherwise indicated, a calendar day.
- 1.13 “Facility” means various physical spaces located within Government’s premises.
- 1.14 "Government" or “Federal Government” means the Research and Innovative Technology Administration (RITA).
- 1.15 “Government Personnel” means any employee, officer, agent, consultant, or other individual (excluding federal contractor personnel) acting under the direction or authority of the Federal Government.
- 1.16 For purposes of this Agreement, “Government Purpose License Rights” or “GPLR” is defined as being the same as “Unlimited Rights” as specifically defined in 48 C.F.R. 52.227-14(a) with respect to Subject Data. For purposes of this Agreement, however, such definition does not include the right to have or permit others to use the data for commercial purposes.

- 1.17 “Invention” means any creation, method, device, process, discovery or development (including computer software), which is or may be patentable under Title 35 of the United States Code. (See definition for “subject invention” at below paragraph 1.22)
- 1.18 “Made” when used in connection with an invention, means the conception or the first actual reduction to practice of a particular Invention.
- 1.19 “Patent Application” means the United States or foreign patent application, continuation, continuation-in-part, divisional, reissue and/or reexamination of any particular invention.
- 1.20 “Proprietary Information” means any information which embodies trade secrets developed at private expense, or any business, commercial or financial information that is privileged or confidential, provided that such information:
- (a) Is identified as “proprietary information” by labels or markings designating the information as proprietary;
 - (b) Has not been developed independently by any person who had no access to the “proprietary information;”
 - (c) Is not known or available from other sources without obligations concerning its confidentiality;
 - (d) Is not already available to the Government without obligations concerning its confidentiality;
 - (e) Has not been made available by the owner(s) of the information to others without obligations concerning its confidentiality; and
 - (f) Is not required to be disclosed by law or by a court of competent jurisdiction.
- 1.21 “Sensitive Data” or “Sensitive Information” means privileged, Collaborator Proprietary Data, or Proprietary Information which, if compromised (e.g., through unauthorized disclosure, alteration, corruption, loss, or misuse) with respect to confidentiality, integrity, and/or availability could have a material adverse effect on the owner’s interests, the conduct of agency’s programs or collaborator’s business, or the privacy to which individuals are entitled.
- 1.22 “Subject Data” means any data or information first produced, whether solely by either party to this Agreement, or jointly by the parties of this Agreement, in the performance of work under this Agreement.
- 1.23 “Subject Invention” means any invention made in the performance of work under this Agreement whether accomplished solely by either party to this Agreement, or jointly by the parties of this Agreement.
- 1.24 “Test Bed” means any installation where 5.9GHz DSRC infrastructure devices or other V2I communications equipment may be installed and operated.
- 1.25 “Third-Party Collaborator” means any party or entity with whom the Government or the Collaborator has entered into a contract or agreement (including another MOA or an

interagency or intraagency agreement) involving work performed in connection with or related to activities under this Agreement.

- 1.26 “Unlimited Rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

ARTICLE II – PURPOSE, SCOPE, AND DURATION

- 2.1 **Purpose.** The purpose of this Agreement is to give the named organization an equal ability to participate in an affiliation of 5.9GHz DSRC infrastructure device and other V2I communications installation operator Test Beds.
- 2.2 **Scope.** Under this Agreement, the parties shall collaborate in research and share resources (e.g. expertise, knowledge, data, equipment, facilities) as needed to support the specific tasks given to the affiliation of Test Beds. Each task will result in a specific document such as a device requirements specification or a device installation guideline (See Article III herein. See also the Specific Task Statement of Work at Attachment B).
- 2.3 **Term of Agreement.** This Agreement shall become effective on the 31st day after the date of the last parties signature is affixed hereto. Further, this Agreement shall continue in effect for duration of three (3) years from the effective date, or until terminated in accordance with Article VI herein, whichever date is earlier.

ARTICLE III -- CONTRIBUTIONS OF THE PARTIES

- 3.1 **Contributions of the Government.** Under this MOA, the contributions of the Government are limited to providing personnel, knowledge, expertise, intellectual property, services, equipment, facilities, and/or other resources excluding direct funding of the Collaborator(s). Consistent with these limitations, during the term of this Agreement, Government shall:
- 3.1.1 Provide organizational support. The Government will organize regular web meetings, video teleconferences or teleconferences and provide staff support to create agendas for and records of the meetings.
- 3.1.2 Create Statements of Work for specific tasks that the Affiliation will undertake. The contributions of the parties related to the specific task will be included in the statement. Notwithstanding the foregoing, Affiliation members are free to perform additional research work in this general field of endeavor, with or without other Affiliation members, provided none of such work is performed using Government Facilities, Government Personnel, or using Government funds, unless such work is part of a separate agreement with the Government.

- 3.1.3 Create and/or publish and distribute reports, reviews and other data pertinent to the research performed under this Agreement, provided that any such publication may not, without a Collaborator's prior written consent, disclose any Collaborator's Proprietary Data.
- 3.1.4 Provide or establish a public/private key method where Sensitive Data (see paragraph 1.20) will be encrypted via a public key by the Government.
- 3.1.5 Provide to Collaborator the sole private key to access and decrypt the Sensitive Data as it is generated and stored up to three calendar months. Sensitive Data older than three (3) calendar months from the time of collection will be deleted without notice from the Government-owned network.
- 3.1.6 Make Subject Data available to the Collaborator upon request.
- 3.1.7 Be responsible for the cost of the Government's personnel's attendance at, and participation in, meetings, video teleconferences, teleconferences, and other activities relating to work under this Agreement.
- 3.1.8 Permit Collaborator to access the ITS Joint Program Office's equipment at the ITS Joint Program Office's Test Bed facilities in Southeast Michigan and Oak Ridge, Tennessee, as may be necessary. Such access will not include access to DOT-owned or -purchased information systems.
- 3.1.9 Perform any other task as consistent with or identified in the Statement of Work, appended as Attachment B hereto, or as may be identified in subsequent work plans.
- 3.2 **Contributions of the Collaborator.** During the term of this Agreement, the Collaborator shall:
 - 3.2.1 Assign personnel to attend the regular web meeting, video teleconference or teleconferences. The minimum expected contribution of a Collaborator will be to have one person participate in at least $\frac{3}{4}$ of the scheduled meetings for up to 2 hours each.
 - 3.2.2 Participate in at least one Specific Task by contributing to at least one task as consistent with or identified in the Statement of Work, appended as Attachment B hereto, or as may be identified in additional Statements of Work.
 - 3.2.3 Suggest to Government topics to be considered for additional Statements of Work to be conducted either by Collaborator alone, Collaborator and Government, or Collaborator with a third party.
 - 3.2.4 Assist Government in the creation, publication and distribution of reports, reviews and other data pertinent to the research and analysis performed under this Agreement.

- 3.2.5 Be responsible for the cost of its personnel's attendance at, and participation in, meetings, video teleconferences, teleconferences, and other activities relating to work under this Agreement, as applicable. (No funds from Federal Government contracts of any Federal agency shall be used for this purpose.)
- 3.2.6 Establish and implement a Collaborator Subject Invention reporting policy, as may be applicable.
- 3.2.7 Report all Subject Inventions to Government within sixty (60) days after the disclosure or identification of the Subject Invention to those parties responsible for handling such matters within Collaborator, or within thirty (30) calendar days after expiration or termination of this Agreement, whichever is earlier.
- 3.3 **Additional Contributions of the Collaborator.** In addition to the requirements identified in above-paragraph 3.2, the Collaborator may contribute equipment, material, supplies, facilities, "in-kind" services and funds in connection with the work under this Agreement at its sole discretion.
- 3.4 **Joint Contributions of the Government and the Collaborator.** During the term of this Agreement, the parties shall:
- 3.4.1 Jointly prepare, for the benefit of each other, quarterly written reports that shall describe the progress of the work under this Agreement, problems encountered, and results obtained. The progress of the work shall be subject to joint review by the parties. The parties shall jointly prepare such report in a format that is accessible to and useable by both parties. Requirements for additional reports may be identified in the Statement of Work.
- 3.4.2 Jointly prepare, for the benefit of each other, a Final Report for each Statement of Work the Collaborator participates in that shall:
- (a) describe the work and results accomplished over the life of this Agreement;
 - (b) include a listing of all copyrights, patents and inventions, if any, resulting from all work under this Agreement; and
 - (c) specify the disposition of all Subject Data, Subject Inventions, and other intellectual property resulting from work under this Agreement.

The parties shall complete such Final Report no later than the expiration or termination of this Agreement, with a written draft of such Final Report due no later than thirty (30) days after the expiration or termination of this Agreement. In the case of a termination (see Article VI) that provides less than thirty (30) days before the effective date of termination, the parties shall prepare a written draft of the Final Report as soon as a practicable, but not more than thirty (30) days after the official date of termination.

- 3.4.3 Each party to this Agreement will retain at least one copy of such Final Report required under paragraph 3.4.2.

ARTICLE IV -- MANAGEMENT, SECURITY, AND SAFETY

4.1 Appointment of Managers.

- 4.1.1 Appointment Officials. The Director of the ITS Joint Program Office and the Collaborator shall each appoint or otherwise designate a Program Manager and a MOA Manager (see Attachment A hereto.) Those persons may appoint, designate, update or otherwise change their appointed Program Manager or MOA Manager in accordance with the provisions of subsection 4.1.2 of this Section.
- 4.1.2 Change in Manager(s). At any time, any party may unilaterally update or otherwise change its appointment or designation of its Program Manager and/or its MOA Manager to this Agreement. Such party seeking to update or otherwise change its appointment or designation of its Program Manager and/or MOA Manager shall give *written* notice of the change to the other parties to this Agreement. Such change may be incorporated by revision to Attachment A hereto, and does not require an amendment (see Article IX) to the MOA. However, *within 30 days* of a change of a Program Manager or a MOA Manager, the current Government MOA Manager or Government Program Manager shall copy such change to ITS/JPO Program Director.

4.2 MOA Management.

- 4.2.1 Administration of Agreement. Together, the MOA Managers, with oversight by the Program Managers, shall jointly manage and administer this Agreement. MOA Managers are responsible for ensuring that the parties actively and diligently pursue the purpose of and work under this MOA. The MOA Managers shall cooperate with each other and shall meet or conference periodically to review the ongoing collaborative activities.
- 4.2.2 In the temporary absence (30 consecutive days or less) of a MOA Manager, the corresponding Program Manager shall assume responsibility for managing and administering this Agreement with the remaining MOA Manager.
- 4.2.3 From time to time within the period of this Agreement, and with input and agreement from both parties, the parties to this MOA, subject to available funds, and with agreement from both parties may add to a Statement of Work to pursue additional work that supports the purpose of this MOA and its Statement of Work (Attachment B). Additional Statements of Work shall not require any additional approval or concurrence by RITA Administrator. (See paragraph 9.15.2.)

4.2.4 Government MOA Manager shall endeavor to resolve any disagreements arising under this Agreement. Any dispute Government MOA Manager cannot resolve shall be determined and resolved in accordance with Article VII herein.

4.3 Security and Access to Government.

4.3.1 Access to Government Facilities

4.3.1.1 The Government MOA Manager shall assist Collaborator, as necessary, in obtaining access for Collaborator Personnel to Government facilities.

4.3.1.2 Collaborator will advise all Collaborator Personnel who require access to Government facilities that in order to gain access they may be required to provide their social security numbers, fingerprints, as well as any other information deemed pertinent by Government Security prior to gaining access to Government facilities. Access may be “escorted access” or “unescorted access” as granted by the pertinent Security official.

4.3.1.3 While at a Government Facility, Collaborator’s Personnel are subject to and shall comply with all security regulations, directives, orders, and instructions promulgated by or otherwise applicable to Government, and the Government populace. A violation of any security regulation, directive, order, or instruction may be grounds for immediate eviction of those Collaborator Personnel from the Government Facility.

4.4 **Safety and Accident Prevention.** At all times, Collaborator Personnel and Government Personnel, and others working under this Agreement are subject to and shall comply with all applicable safety regulations, directives, orders, and instructions promulgated by or otherwise applicable to the Government populace. Collaborator Personnel and Government Personnel shall take all reasonable steps and precautions to prevent any accident and to preserve the life and well-being of Collaborator Personnel, Government Personnel and the public. A violation of any applicable safety regulation, directive, order, or instruction may be grounds for immediate removal of the violator from a Government Facility.

ARTICLE V -- INTELLECTUAL PROPERTY

5. MARKING, OWNERSHIP, ACCESS, AND PUBLICATION.

5.1 **Marking or Labeling of Data.** A party providing Proprietary or Sensitive Information or Data under this Agreement shall mark, or label appropriately or otherwise identify any Proprietary Information or Sensitive Information that it furnishes to the other party prior to providing said Proprietary Information or Sensitive Information.

5.2 **Disclosure of Information.** The parties agree not to knowingly disclose to others who are not a party to this Agreement, or make use outside of this Agreement of any Proprietary or Sensitive Data or Information belonging to the other party of this Agreement, provided that (1) the data is appropriately marked, labeled or identified, and (2) the data was obtained as a result of activities under this Agreement. Such markings necessarily include, but are not limited to, the data being marked as “Proprietary Information”, “Sensitive Data”, or “Sensitive Information.”

5.3 **Ownership/Title.**

5.3.1 Existing Property. The Government and Collaborator, respectively, shall each retain title to all its pre-existing data, property, facilities, equipment, or other resources made available for work under this Agreement.

5.3.2 Subject Data and Subject Inventions.

5.3.2.1 Each party shall have title to all Subject Data and Subject Inventions developed or generated entirely by that party.

5.3.2.2 All Subject Data and Subject Inventions developed jointly by the Government and Collaborator under this Agreement shall be the property of both the Government and the Collaborator (co-ownership).

5.4 **Rights in Data.**

5.4.1 Both parties shall have unlimited rights in all Subject Data generated under this Agreement that is not Proprietary Information of the other party generated prior to the initiation of this Agreement.

5.4.2 The Government shall have Government Purpose License Rights in data developed by Collaborator and shared under this Agreement.

5.5 **Patents.**

5.5.1 Disclosure of Patent Rights. Collaborator and Government shall disclose to one another, in writing, any Subject Invention, within sixty (60) days after the inventor(s) first disclose the Invention to the person(s) responsible for its patent matters. Each party will exercise reasonable diligence to identify any Subject Inventions and inform its personnel of the need to report possible inventions promptly.

5.5.2 Allocation of Patent Rights.

5.5.2.1 In those cases where Subject Invention is developed solely by the Government, the parties agree that the Government retains the entire right, title, and interest throughout the world to such Subject Invention,

and may, at its sole discretion, grant to Collaborator, upon receipt of a written request, a nonexclusive license in fields of use in which Collaborator has achieved practical application and continues to make the benefits of the Subject Invention reasonably accessible to the public.

- 5.5.2.2 In those cases where Subject Invention is developed jointly by the Government and Collaborator, the parties agree that both parties mutually retain the entire right, title, and interest throughout the world to such Invention. The Government may, at its sole discretion and upon written request from Collaborator, assign its ownership interest in the Subject Invention to Collaborator. In the event that Government makes such an assignment, Government shall retain a nonexclusive, irrevocable, worldwide, royalty-free right to practice or use and have practiced or used the Subject Invention for governmental purposes by or on behalf of the United States and by or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States. Additionally, Government shall retain March-In rights as specified in Section 5.6.4.
- 5.5.2.3 In those cases where Subject Invention is developed solely by Collaborator, the Government acknowledges Collaborator retains the entire right, title and interest to the Subject Invention. Collaborator shall provide Government a nonexclusive, irrevocable, worldwide, royalty-free license to practice and have practiced the licensed Subject Invention for governmental purposes by or on behalf of the United States and by or on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States. Should the Collaborator elect not to retain the entire right, title and interest to the Subject Invention, Collaborator shall assign its entire right, title and interest to Government and Collaborator shall be entitled, upon election in writing, to an exclusive license in accordance with paragraph 5.6.2 herein.
- 5.5.2.4 Filing of Patent Applications. The parties shall mutually agree on which party shall file a patent application on jointly developed Subject Inventions. The party not filing a patent application will fully cooperate with (including executing all necessary documents and obtaining the cooperation of its personnel in executing such documents) the filing party in the preparation and filing of any patent application based upon a jointly developed Subject Invention. Both parties shall exercise their best efforts to timely file a patent application or to enable the other to timely file a patent application in accordance with Title 35 of the United States Code or comparable provision of foreign law.
- 5.5.2.5 Patent Expenses and Copies. All expenses related to or arising from the filing of any patent application, including any post-filing, post-patent fees, legal fees, and any other incidental or miscellaneous expense shall

be borne by the party filing the patent application. Each party shall provide the other party with a copy of each patent application it files on any Subject Invention. If Government Personnel and Collaborator Personnel jointly developed the Subject Invention, each party shall have the right to inspect and make copies of all documents retained in the official patent application or other related files of the other party.

5.6 License and Royalties.

- 5.6.1 Each party to this MOA, by signature at the end of this MOA, certifies that to the best knowledge of the [TBD Official of the Collaborator] and as of the effective date of the MOA, its personnel are not encumbered by any assignment of title/ownership, royalties, and/or of any other right that would bear upon or affect any title/ownership, royalties and/or any of the rights granted within this MOA.
- 5.6.2 Exclusive License. Collaborator reserves the right (“reservation of right period”) to obtain from the Government an exclusive license to use or practice the joint Subject Invention in one or more lines of business upon such terms to be negotiated in good faith between Government and Collaborator. This reservation of right period shall expire within sixty (60) calendar days after disclosure or identification of the joint Subject Invention, or within thirty (30) calendar days after expiration or termination of this Agreement, whichever is earlier. Collaborator agrees that Collaborator shall not receive such exclusive license unless Collaborator notifies, in writing, the Government of its desire to obtain an exclusive license and negotiates with the Government such license agreement. This written notice (one copy each) must be submitted to Government MOA Manager and Government Program Director within the “reservation of right period.” Within a reasonable period after Government receives such written notice, the parties shall negotiate terms and conditions of the license agreement (see below paragraph 5.6.5).
- 5.6.3 In the event that a Collaborator does not seek an exclusive license within sixty (60) calendar days after disclosure or identification of the joint Subject Invention, or within thirty (30) calendar days after expiration or termination of this Agreement, whichever is earlier, the Collaborator shall lose its right to obtain an exclusive license.
- 5.6.4 March-In Rights. If Collaborator does not timely seek an exclusive license and subsequently loses its right to an exclusive license for any joint Subject Invention (see above paragraph 5.6.3), Government shall have the right to request the Collaborator grant a nonexclusive, partially exclusive or exclusive license in any field of use to any responsible third-party who applies for such a license based on terms that are reasonable under the circumstances. If Collaborator declines a request to grant such a license, then RITA, on behalf of the United States Government, may grant such a license to the applicant(s) provided the action is necessary because the Collaborator has not taken, or is not expected to take action within a reasonable time to achieve practical application of the joint

Subject Invention in such field of use for which the applicant(s) request a grant of license.

- 5.6.5 Collaborator may be granted a nonexclusive royalty-free license throughout the world in Subject Invention to which the Government has title.
- 5.6.6 Confirmatory Nonexclusive License Agreement. For each nonexclusive license granted under this Agreement, each party shall provide to the other party a confirmatory license agreement to be negotiated in good faith between RITA, on behalf of Government, and Collaborator.
- 5.6.7 Royalties for Joint Research. Collaborator (including any Third-Party Collaborator) shall be required to pay to Government a reasonable royalty on income received by Collaborator or its affiliates from the licensing, assignment, sale, lease and/or rental or other disposition of any copyrighted and/or patented work based on the results of work performed at a Facility in which there is at least one Government Personnel co-author or co-inventor, except where such disposition is to the United States Government. Such reasonable royalty rate and offsets against income against which such rate is to be applied shall be negotiated in good faith between the parties upon the first instance of the generation of such income. The result of such royalty rate and offset to income negotiations to result in a written agreement specifying the terms of and for such payments. In any case, such royalty payments shall be payable by Collaborator to RITA on behalf of the Government not later than sixty (60) days after the calendar year ending December 31 in which the Collaborator receives the income.

5.7 Copyright.

- 5.7.1 Either party may establish a copyright in scientific and technical articles based on or containing Subject Data, and published in academic, technical journals, professional journals, or similar works. However, before publication, the publishing party shall provide a courtesy copy of the proposed publication in accordance with paragraph 5.8 herein to the other party. For all other Subject Data first produced by both parties in the performance of this Agreement, but not published in academic, technical journals, professional journals, or similar works, Collaborator shall request from Government Director written permission in order to claim copyright in such Subject Data. If granted, written permission to claim copyright to this Subject Data, Collaborator shall affix not only the applicable copyright notice (see 17 U.S.C. 401 et. seq.), but also an acknowledgment of Government collaboration and/or sponsorship of the Subject Data. In either case, after the copyright is obtained and the Subject Data is published or otherwise available for dissemination, Collaborator shall provide two copies of such copyrighted Subject Data, materials, document and/or publication to the Government (see paragraph 5.7 herein).

- 5.7.2 For data other than computer software, Collaborator grants to the Government and others acting on its behalf, a nonexclusive, irrevocable, worldwide, royalty-free license in such copyrighted data to reproduce the copyrighted data or materials, in part or in whole, in a paper, electronic or digital format, as well as to prepare derivative works from the copyrighted data or material, distribute copies of such reproduced or derivative works to the public, and perform publicly and display publicly such reproduced or derivative works, by or on behalf of the Government. For computer software, the Collaborator shall grant to the Government and others acting on its behalf, a nonexclusive, irrevocable, worldwide, royalty-free license in such copyrighted computer software to reproduce the copyrighted computer software, as well as to prepare derivative works from the copyrighted computer software, and perform publicly and display publicly (but not to distribute copies to the public) such reproduced or derivative works, by or on behalf of the Government.
- 5.7.3 Collaborator shall not knowingly incorporate any data, writing or work copyrighted, licensed or patented by any third party non-Collaborator into any joint Subject Invention, unless the Collaborator has acquired for Government, or Government otherwise obtains, a nonexclusive, irrevocable, worldwide and royalty free license to reproduce, publish, or otherwise use, and to authorize others to use the work or writing for Government purposes. This provision does not require Government to obtain such license to permit incorporation of the third party non-Collaborator copyrighted, licensed or patented data, writing or work into a joint Subject Invention.
- 5.7.4 The Collaborator shall be responsible for an amount proportional to the damage caused by the Collaborator of losses that result from or arise out of the negligent use of or breach of this Agreement Article V provisions by its employees or agents regarding the publication, translation, reproduction, delivery, use, practice, or disposition of any Subject Data, Subject Invention, or protected Proprietary or Sensitive Information provided under this Agreement notwithstanding that this provision shall not be deemed a waiver by Collaborator of any immunities to which it may be entitled under applicable Federal, State, local or other laws.

5.8 Publication and Presentations.

- 5.8.1 The parties agree to confer and consult prior to the publication of Subject Data to assure that no Proprietary or Sensitive Information is released.
- 5.8.2 Prior to submitting for outside review any manuscript that contains Subject Data or results of research and/or development under this Agreement, the Government shall be offered a reasonable opportunity to review such proposed publication. If no such outside review is sought, made, or obtained, the Government shall be offered a reasonable opportunity to review such proposed publication before Subject Data is published.

- 5.8.3 Collaborator shall coordinate with the Government Program Manager before publication for all proposed publications, presentations or use of Subject Data for public release to ensure that no Sensitive Information or Sensitive Data are included in the proposed publications, presentations, or use. In any case, Collaborator shall not publish or otherwise disclose Sensitive Information or Sensitive Data.
- 5.8.4 Notwithstanding rights granted to Collaborator elsewhere in this Agreement, Government may submit for publication the work developed under this Agreement. Depending on the extent of contributions made, Collaborator Personnel may be cited as co-authors. In the event Government wishes to submit research and/or development results for publication, before publication, the Government will notify Collaborator's MOA Manager. In no event, however, shall the name of Collaborator or any of its trademarks and/or trade names be used in any publications without Collaborator's prior written consent.
- 5.8.5 Each party shall prominently mark each written work resulting from performance of work under this Agreement with the words (verbatim):

This work was created in the performance of an Agreement between [TBD Organization(s)] and the Research and Innovative Technology Administration of the United States Department of Transportation.

5.9 Use of the Affiliated Test Bed Logo.

- 5.9.1 Parties to this Agreement can identify themselves as a member of the Affiliated Test Beds.
- 5.9.2 Parties to this Agreement have the right to use the Affiliated Test Bed mark on documents, promotional materials, and web sites.

ARTICLE VI -- TERMINATION

- 6.1 **Bilateral Termination:** The parties may terminate this Agreement at any time by written mutual consent evidenced as an amendment to this Agreement.
- 6.2 **Unilateral Termination:** Either party may unilaterally terminate this Agreement by giving ninety (90) days' notice, in writing, to the other party to this Agreement.
- 6.3 Only the signatories to this Agreement (or other authorized person) can terminate this Agreement before expiration of the term of the Agreement. No Program Manager or MOA Manager has the authority to terminate this Agreement at any time. However, the Program Manager and/or MOA Manager may recommend to a signatory that termination is in the best interest of the party.

6.4 The termination of this Agreement by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination. In the event of termination by either party, each party shall be responsible for its own costs incurred through the date of termination, and for its own costs related to the termination that is incurred after the date of termination.

6.5 **Maintenance and Disposition of Property.**

6.5.1 During the term of this Agreement, Collaborator shall be responsible for all costs of maintenance, removal, storage, repair, shipping, and/or disposal of all equipment or property to which it retains title. Disposal of property will be in accordance with applicable disposal laws and regulations.

6.5.2 The Government may request that Collaborator equipment remain as part of the product or system in which it has been installed. The parties may confer regarding the value of said Collaborator Equipment, and address the value and any compensation thereof under separate agreement or contract. If Collaborator agrees to leave the Collaborator Equipment in place, Collaborator shall relinquish all claim of title to said Collaborator Equipment, and shall have no further responsibility to maintain or replace it.

ARTICLE VII -- DISPUTES

7.1 **Dispute Resolution.** Any dispute arising under this Agreement that is not disposed of by agreement between the MOA Managers, after all reasonable efforts have been exhausted to reach an amicable settlement, shall be submitted for resolution to Government signatory (or his/her designee) and the Collaborator's signatory (or his/her designee). The Government Director's decision shall be the final disposition of any dispute pertinent to the use of the Facility. The joint decision of the Government signatory (or designee) and the Collaborator's signatory (or designee) shall be the final disposition of any dispute, excluding any dispute pertinent to intellectual property or the use of the Facility. An appropriate administrative or judicial forum possessing competent jurisdiction shall determine final disposition of any dispute pertinent to intellectual property. Nothing in this Agreement is intended to prevent either party from pursuing any other legal remedies it may have available in any court or other forum of competent jurisdiction.

7.2 **Continuation of Work.** Pending the resolution of any dispute pursuant to this Article VII, the parties agree that each shall continue to perform diligently all obligations under this Agreement.

ARTICLE VIII – WARRANTY, INSURANCE, AND LIABILITY

8.1 Warranty.

- 8.1.1 The Collaborator warrants that it is the owner of the Collaborator Equipment that will be or may be provided in connection with the activities under this Agreement.
- 8.1.2 Except as specifically stated herein, neither party to this Agreement makes any expressed or implied warranty as to the condition of any equipment provided in connection with the activities of this Agreement or as to any matter whatsoever, including fitness for a particular purpose of any matter, service, equipment, or product, tangible or intangible.
- 8.1.3 All materials, including but not limited to data, inventions, and software are provided without warranty of merchantability or fitness for a particular purpose and any other warranty, express or implied. Collaborator makes no representation or warranty that use of any invention or software will not infringe any patent or other proprietary right.

8.2 Insurance.

- 8.2.1 Government acknowledges it is self-insured.
- 8.2.2 The Collaborator acknowledges and agrees to maintain a program of insurance and/or self-insurance, which is adequate to address any liability(ies) that may arise out of Collaborator's performance of work and activities under this Agreement.

8.3 Indemnification. To the extent authorized by United States federal law in the case of the Government or by federal and/or state law in the case of Collaborator, each party shall be responsible for any and all claims arising out of its own willful acts or omissions, and those of its employees, officers, agents, directors, invitees, contractors, consultants, or others acting on its behalf or with its authority, during the performance of its or their obligations under this MOA; provided, however, that this provision is not intended to nor will it be interpreted as (1) giving a right of indemnification, either by contract or law, for claims arising out of the performance of this MOA, or (2) a waiver of a party's sovereign immunity.

8.4 Damages. Except to the extent that damage arises from or is related to the negligent or willful misconduct of the Government and its officers, employees, consultants, or agents and Government liability for such damage is cognizable under the Federal Tort Claims Act (FTCA), 28 U.S.C. §2671 et. seq., the Government shall not be responsible for damage to any Collaborator equipment or property used in connection with the activities under this Agreement. Further, except as provided under FTCA or other Federal law where sovereign immunity has been waived, the Government shall not be responsible for the negligent or willful misconduct of its officers, employees, consultants, and agents

for any damage, loss, personal injury or death of Collaborator Personnel arising in connection with activities under this Agreement or because of that person's presence on a government facility based on this Agreement. Where the Government may be liable for certain damage, loss, personal injury or death, under the FTCA the Government will be liable in the same manner and to the same extent as a private individual under like circumstances, but will not be liable for interest prior to judgment or for punitive damages. (See 28 U.S.C. §2674). The parties should be aware that both Federal and state law may impose limitations on liability.

ARTICLE IX – GENERAL TERMS AND PROVISIONS

- 9.1 **Notices.** All notices pertaining to or required by this Agreement shall be in writing and shall be directed to the MOA Managers identified in Attachment A hereto.
- 9.2 **Assignment.** Neither this Agreement nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by either party. Any attempted or actual assignment shall be void.
- 9.3 **Officials Not to Benefit.** No member of, or delegate to the United States Congress, or resident commissioner, nor any employee of the Executive Branch, shall be admitted to any share or part of this Agreement, nor to any benefit that may arise therefrom unless the share, part or benefit is for the general benefit of a corporation or company.
- 9.4 **Drug-Free Workplace.** The parties to this Agreement shall maintain a drug-free workplace consistent with the requirements of the Drug-Free Workplace Act of 1988, 41 U.S.C. §701 et. seq. (P.L.100-690).
- 9.5 **Use of Name or Endorsements.** By entering into this Agreement, the Government does not directly or indirectly endorse any product or service provided, or to be provided, by Collaborator, its employees, officers, successors, assignees, or licensees. The Collaborator shall not in any way imply that this Agreement is an endorsement by the United States Government, the Department of Transportation, and/or the Research and Innovative Technology Administration of any Collaborator product or service. Neither party to this Agreement shall use the name of the other party of this Agreement in any form of publicity without the prior written permission of the other party whose name is to be used. Those persons who may grant such permission are:

For Government: the Chief Counsel, RITA

For the Collaborator: [Name and/or Title],

- 9.6 **Participation in Advertising or Displays in Public or Academic Forums.** With the prior written agreement between the parties to this MOA, either party of this MOA may advertise or display the results of this MOA to the public. Such agreement shall not be unreasonably withheld but is intended to protect against release of Sensitive Data or Information or Proprietary Information the release of which could cause harm to the

Government's and/or the Collaborator's interests. Government and/or the Collaborator will identify, in writing, any limitation(s) to such advertisement or display in a "prior written agreement" consenting to such advertisement or display, and shall incorporate such writing by amendment to this MOA. Any such presentations shall be subject to the Use of Name or Endorsements provisions of Section 9.5 of this Agreement.

- 9.7 **Relationship of the Parties.** The parties to this Agreement and their employees are independent of each other, and are not agents of each other, joint-venturers, partners or joint parties to a formal business organization of any kind. Each party retains sole and exclusive control over its own personnel and operations, and the personnel of either party is not subject to the supervision of the other party.
- 9.8 **Section 508 Electronic Information Technology.** Any development, procurement, maintenance, or use of information technology under this Agreement shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. §794d) as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998. Under Section 508 (29 U.S.C. §794d), agencies must give disabled employees and members of the public access to information that is comparable to the access available to others.
- 9.9 **Americans with Disabilities.** Any equipment used in or created as a product from the performance of the work under this MOA, to the extent practical and by reasonable accommodation, shall conform to the requirements of the American Disabilities Act (as amended, 42 U.S.C. §12101 et. seq.) Collaborator recognizes and complies with the American Disabilities Act, as amended, 42 U.S.C. §12101 et. seq.
- 9.10 **Protection of Human Subjects.** Any research under this Agreement shall be carried out in accordance with the Federal Policy for the Protection of Human Subjects and implementing Department of Transportation regulations, "Protection of Human Subjects", 49 C.F.R. § 11.101 et. seq. Before undertaking any research activity involving human subjects at the Government Facility, a Collaborator or Third-party Collaborator shall submit written assurance, satisfactory to Government that said Collaborator or Third-party Collaborator shall comply with said requirements of policy and regulations pertinent to the protection of human subjects.
- 9.11 **Buy America.** The parties to this MOA agree that any equipment or supply purchases to support work under this MOA will conform to or be in accordance with the United States preference requirements described in 49 U.S.C. §5323(j). Further, the parties agree that any end product of this MOA will also conform to or be in accordance with the United States preference requirements as described in 49 U.S.C. §5323(j).
- 9.12 **Non-Discrimination Compliance.** All activities pursuant to this Agreement shall be in compliance with the provisions of Executive Order No. 11246, 3 C.F.R. 339 (1964-1965), the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. §2000d et. seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. §794); the Age of Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §6101 et. seq.); and with all other federal laws and regulations prohibiting

discrimination on the grounds of race, color, creed, national origin, handicap, religion or gender in providing for facilities and service to the public.

9.13 **Force Majeure.** No party to this Agreement shall be in breach of this Agreement for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a *force majeure* event occurs, the party unable to perform shall promptly notify the other parties and shall in good faith maintain such part performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

9.14 **Waiver of Rights.** Failure to insist upon strict performance of any of the terms and conditions of this Agreement, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party to this Agreement. Any waiver of rights by either party shall be in writing and provided to the other party to this Agreement.

9.15 **Amendment/Modification.**

9.15.1 Either party may seek to modify this Agreement. Such modification shall not be effective until it is incorporated herein by a formally executed written amendment or modification to this Agreement.

9.15.2 A modification or amendment *within the scope* of the Agreement shall become effective the date the ITS JPO Director signs the amendment. An in-scope modification shall not require any coordination beyond the RITA Office of Chief Counsel and the Government Director for the modification to become effective.

9.15.3 A modification or amendment *outside the scope* of, and seeking to expand or otherwise change the scope of, the original Agreement, shall become effective on the 31st day after the date of the Government Director's signature on the proposed modification or upon the date of concurrence by the US DOT RITA Administrator, whichever date is earlier. *An out-of-scope modification shall be subject to coordination with the US DOT RITA Administrator.*

9.15.4 The term of this Agreement can be modified. However the term of this Agreement may not be modified to extend this Agreement beyond a total of five (5) years from its effective date. If additional work is contemplated that would take work beyond five years from its effective date, then this Agreement can be renewed by the signatories (or successors) to this Agreement for a period mutually acceptable to both the Government and the Collaborator, subject to approval by the RITA Administrator (see Article I, paragraph 2.3; see also Article IX, paragraph 9.15.3).

9.16 **Authorization for Amendment.** Only the signatories (or successors) to this Agreement can amend, extend or otherwise modify this Agreement. The MOA Managers shall have no authority to amend, extend, or otherwise modify this Agreement. In keeping with

RITA's authority to enter into MOAs on behalf of the Government, this authority for amendment is not subject to delegation.

- 9.17 **Surviving Provisions.** The following provisions shall survive the termination, expiration or closure of this Agreement: Article I Definitions, Article V Intellectual Property, Article VI Termination, Article VII Disputes, Article VIII Warranty, Insurance, and Liability, and Article IX General Terms and Provisions. Additionally, the requirements for a Final Report (see paragraph 3.4) shall survive the termination, expiration or closure of this Agreement.
- 9.18 **Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect.
- 9.19 **Governing Law.** The Federal laws of the United States shall govern the construction, validity, performance, and effect of this Agreement for all purposes.
- 9.20 **Export Administration Restrictions.** The requirements of 15 CFR Chapter III, Subchapter C, "Export Administration Regulations," apply to this agreement and all relationships concluded hereunder.
- 9.21 **Entire Agreement.** This MOA constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding, written agreement, or oral agreement relative to said matter.
- 9.22 **Execution of the Agreement.** This Agreement will be considered fully executed when the RITA Administrator or designee signs the Agreement.
- 9.23 To expedite processing, this Agreement may be executed in two counterparts, which together shall constitute one and the same instrument. Further, the parties may execute this Agreement by telefacsimile signatures or original signed documents converted to pdf and transmitted electronically via email directly to the RITA Office of Chief Counsel, subject to the following:
- (a) within 48 hours of transmitting the telefacsimile or email counterpart, Collaborator will dispatch or otherwise mail directly to the RITA Office of Chief Counsel, two duplicate original Agreements signed in original hand; and
 - (b) within 21 (twenty-one) days from the date of the Collaborator's signature, the parties shall execute this Agreement in 2 (two) complete originals - that is, two duplicate Agreements signed in original hand by each party with the signatures of the Collaborator's authorized employee(s) or agent(s) and the ITS JPO Director appearing together on each of the same original MOA. The date on these duplicate originals shall bear the same date the party signed the counterparts. Thereafter, the previously executed counterpart Agreement shall cease to act as any original replaced by the conformed duplicate original Agreements. Collaborator will receive from the RITA Office of Chief Counsel one completely executed original MOA in a reasonable period after the MOA

becomes effective. The effective date of this Agreement shall remain as established by paragraph 2.3 herein.

2 Attachments:

Attachment A Identification of MOA/Program Managers and their contact information

Attachment B Sample Statement of Work

This Agreement consists of ~~2525~~ pages, including Attachments A and B.

IN WITNESS WHEREOF, each individual signing this document represents that s/he has the authority to execute this Agreement on behalf of her/his respective agency, or business, and each such individual have set forth her/his signature and executed this Agreement in duplicate:

FOR THE COLLABORATOR:

DATE

NAME

Title

Phone Number

[Please use corporate seal. **If no corporate seal, please obtain notarization**]

On this day, [Insert Name] appeared before me, presented sufficient identification or is personally known to me, and set forth his hand this _____ day of _____, ____.

.

Notary Public

My Commission Expires:

FOR THE GOVERNMENT:

United States Department of Transportation

Research and Innovative Technology Administration (RITA)

DATE

NAME

Director, ITS JPO

+1 202 366 9536

I approve / do not approve (please circle one) the work proposed under this Memorandum of Agreement. (If no action taken, please see paragraph 2.3 herein.)

DATE

GREGORY D. WINFREE

Deputy Administrator, RITA

+1 202-366-4412

The Managers for this Agreement are:

TBD Organization (COLLABORATOR)

Program Manager

Name:

Address:

Tel:

Fax:

Email:

MOA Manager

Name:

Address:

Tel:

Fax:

Email:

FOR RITA (GOVERNMENT)

Program Manager

Name: Walton Fehr

Address: United States Department of Transportation
Research and Innovative Technology Administration
1200 New Jersey Ave., SE
Washington, DC 20590

Tel: +1 202 366 0278

Fax: +1 202 493 2027

E-mail: walton.fehr@dot.gov

MOA Manager

Name: Walton Fehr

Address: United States Department of Transportation
Research and Innovative Technology Administration
1200 New Jersey Ave., SE
Washington, DC 20590

Tel: +1 202 366 0278

Fax: +1 202 493 2027

E-mail: walton.fehr@dot.gov

AFFILIATED TEST BED
STATEMENT OF WORK DETAILS #1

1. BACKGROUND.

One of the most defining documents of interest to 5.9GHz Dedicated Short Range Communications (DSRC) device makers and operators is the Requirements Specification that defines roadside equipment (RSE). The current version of that specification was developed to support the US Department of Transportation's Safety Pilot Model Deployment in Ann Arbor, Michigan. That specification is due for an update to include lessons learned in that installation.

2. OBJECTIVE: The objective of this task assignment is to advance the development and practical use of 5.9GHz DSRC RSE.

3. SCOPE OF THE WORK

- 3.1 The parties to the MOA will collaborate in activities leading to the next revision of the RSE Requirements Specification.
- 3.2 The Government will provide a technical editor and other means to collect comments and assemble interim documents.
- 3.3 The Collaborator will participate in monthly web meetings and provide written comments to interim documents at their sole discretion.
- 3.4 The parties to the MOA will prepare and share periodic reports (e.g. progress reports, project reports) as provided for in the MOA and subsequent work plans, if any. The parties shall also prepare and share a final version of the RSE Requirements Specification update at the completion of all work under the MOA.